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The Honorable Colleen McMahon  
District Judge of U.S. District Court for the Southern District of New York  
Moynihan United States Courthouse  
500 Pearl Street, Room 2550  
New York, New York 10007-1312

MEMO ENDORSED

May 23, 2022

RE: non-party seeking video of Nichols deposition in closed case (via fax and U.S. mail)

Dear Judge McMahon:

We come to you after two unsuccessful years of trying to obtain the video recording of a deposition related to a closed case in your Court. We respectfully request that the Court grant us immediate access to the video, or in the alternative, provide guidance as to our legal options.

I am helping a friend and documentary film director for a small motion picture production company, Small Victory LLC ("Small Victory"), who is making a documentary partially about Mr. Robert Booth Nichols ("Nichols"). Nichols was deposed on December 16, 2008 in *U.S. v. Samuel Israel, III (05 Cr. 1039 (CM))* and *Bayou Management LLC v. Robert B. Nichols, Ellen M. Nichols, Samuel Israel, III, and John Does 1-5 (08 Civ. 6036 (CM))*.

While the transcript of the deposition is widely available on the Internet, the sole known video copy is located at Deckert LLP in Manhattan, on the desk of Mr. Gary Mennitt ("Mennitt"), one of the attorneys for plaintiff Bayou Management LLC. Mennitt has tried to be helpful, but is of the opinion that the recording is covered by a 2008 protective order ("Order") requiring confidentiality, and cannot be shared without the consent of all parties. In addition to Mennitt, we have spoken with the representatives for each of the parties. These include the government, represented by Ms. Margery Feinzig, Nichols (now deceased), represented by Mr. Joseph Bainton, and Mrs. Ellen Nichols, Nichols' widow, represented by Mr. Martin Simone. Ms. Feinzig, Mr. Bainton, and Mennitt have indicated that they would give their consent. Only Mr. Simone objects to Mennitt's releasing of the recording.

We acknowledge the existence of the Order, however, with respect to the deposition video, we disagree that it is applicable to Small Victory as a non-party. Even if we conceded that it were applicable, the relevant, ostensibly factual elements of the recitals or "Whereas clauses" are no longer accurate. Furthermore, the underlying purpose of the Order has been irreversibly frustrated by the public availability of the deposition transcript itself, the death of Nichols, and the passage of 14 years since its enactment.

Thus far, the unavailability of the footage has placed a significant artistic and financial burden on Small Victory. It is the only known videotaped account that Nichols gave of his biography and business deals, which are both key to the documentary. The video, rather than transcript, is necessary because the project is a motion picture documentary. Additionally, as with any other news program, we have limited time due to deadlines to air the program. Also, we are a small company with limited resources that cannot keep paying lawyers to endlessly negotiate with one objecting party. This burden will continue for as long as we are denied access.

For these and other reasons, we feel strongly that our request to obtain a copy of this video deposition for use in the Small Victory documentary is reasonable and on solid legal ground. However, because the Order does not provide a pathway for non-parties to move the Court for its disclosure, we are unsure what options we have other than filing a notice to appear or attempting to intervene in a closed case. While we would be honored appear before you to elaborate on this request, we want to be respectful of the court's limited time and resources.

We respectfully request immediate access to the video, or in the alternative, guidance as to our legal options in this closed case.

Very truly yours,

Prescott Martin III

Prescott Martin III, Esq. / SDNY / NYS Bar ID: 5608294

ENCLOSURE: Protective Order

6/7/2022  
I have asked the  
government and Mr. Mennitt  
and as there is no objection I  
authorize Mr. Mennitt to share  
the video with Mr. Martin  
C